the city by a fine, the proceeding, even though by complaint, may well be considered civil rather than criminal. On the other hand, if the object is to penalize the offender, it would seem that the proceeding to collect the fine, unless it be an action of debt, and certainly the proceedings to impose a penalty of imprisonment, would be of a criminal character. The statement of the principal case, therefore, that such proceedings are merely civil would seem too broad; yet two convictions may be supported in such cases on the ground above suggested that the constitutional protection against double jeopardy was not intended to extend to punishment for violation of a city ordinance.

WHAT CONSTITUTES A CLOG ON THE EQUITY OF REDEMPTION? — The principle that an extortionate or oppressive contract is not necessarily enforceable because voluntarily made has been thought especially applicable to money-lending transactions. Accordingly, if the borrower gives security there is a rule that he may repudiate any part of his mortgage agreement that clogs the equity of redemption. Definitions of such an agreement, differing substantially, appear successively in English cases. The original test, whether the mortgagor promises something beside repayment of the loan with interest, was succeeded by one less sweeping, namely, whether the mortgagor's by-agreement makes redemption harder. *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307. Then it was reasoned that if the mortgage given was a security as well for the performance of any additional agreement as for repayment of the loan, redemption was made no harder because that very agreement became part of the mortgage-obligation. *Santley* v. *Wilde*, [1899] 2 Ch. 474; see 13 HARV. L. REV. 595. It was problematical whether this decision left any case to which the rule against clogging redemption could apply; for by the admitted test there was no clog unless the burden of redeeming was increased, and by the decision itself agreements which most directly increased that burden were valid as becoming part of the mortgage transaction. Recently the question was neatly raised. A lessee of a public-house mortgaged his term, and purported to bind the land by a covenant to sell there none but the mortgagees' liquors. The incumbrance of the covenant was to exist during the whole term, even after the mortgage was satisfied. This particular stipulation the Court of Appeal held unenforceable, as being without the rule of *Santley* v. *Wilde*, *supra*, because not secured by the mortgage. *Rice* v. *Noakes & Co.*, [1900] 2 Ch. 445. The paradox is that if the mortgage had secured the covenant the bargain, though harder than that in the principal case, would have been sustained. The House of Lords, in affirming the decision, chose rather to disapprove *Santley* v. *Wilde*. *Noakes & Co., Ltd.*, v. *Rice*, [1902] A. C. 24.

The decision has more than the mere effect of weakening the rule in *Santley* v. *Wilde*. The covenant made redemption no harder, if by redemption is meant obtaining a reconveyance of the term. The judgment, however, interprets redemption in this connection as meaning a reacquisition by the mortgagor of the property in the condition in which he transferred it. The covenant is accordingly held invalid so far as it caused an incumbrance on the land outlasting the mortgage. The technical nature of this result appears in the technical distinctions which it necessitates. A covenant binding land not covered by the mortgage

would be no less onerous than the one under discussion. Presumably, however, such a covenant would be enforced; for the present rule affects only agreements restricting the mortgagor's rights in the particular property he mortgages. In fact, in a decision rendered pending the appeal to the House of Lords in the principal case, the rule was held to be limited to agreements enforceable specifically in equity against that property. *Carritt* v. *Bradley*, [1901] 2 K. B. 550 (C. A.). The mortgage was of a stockholder's controlling interest in a company. The court sustained the mortgagor's collateral agreement to use this interest always thereafter to secure employment for the mortgagee by the company. There seems to be no true distinction from *Noakes* v. *Rice*, *supra*, for whether the remedy for breach is equitable or merely legal does not concern a mortgagor who keeps his promise. In one case as much as in the other his use of the property is hampered. A recent Irish case approved in the judgment of the House of Lords in *Noakes* v. *Rice*, *supra*, does not recognize any such distinction. *Browne* v. *Ryan*, [1901] 2 I. R. 653.

Whether American courts will have to solve the complexities suggested by these cases and how they may do it is conjectural, for the whole doctrine seems yet undeveloped here. *Cf. Uhlfelder* v. *Carter's Admr.*, 64 Ala. 527; *Northwestern, etc., Ins. Co.* v. *Butler*, 57 Neb. 198.

Measure of Damages on a Contract When the Discharged Employee Goes to Work for Himself. — In an action by an employee for breach of the contract of service, the law aims to compensate him for his actual loss. *Goodman* v. *Pocock*, 15 Q. B. 576. It is, however, his duty, under the doctrine of avoidable consequences, to use reasonable care to reduce his damage by securing other employment; and the amount that he can recover is limited to the difference between what he would have received under the contract, and what he has earned or might with due diligence have earned elsewhere during the term of the employment. *Ream* v. *Watkins*, 27 Mo. 516; *Dickinson* v. *Talmage*, 138 Mass. 249. A nice question is presented when the injured party, instead of entering the service of some one else or remaining idle, goes to work on his own account. It has recently been decided that in such a case the amount recoverable is the difference between the contract price, and what must have been paid to another to do the work that the injured party has done in his own business. *Lee* v. *Hampton*, 30 So. Rep. 721 (Miss.). Only two cases with similar facts have been found. *Huntington* v. *Ogdensburgh*, 3 How. Pr. (N. Y.) 416; *Harrington* v. *Gies*, 45 Mich. 374. The first is in agreement with the principal case, while the second allows no deduction whatever. It does not appear in any of these cases whether the total profits of the injured party in his own business were greater or less than the sum that he would have had to pay a servant to take his place in conducting it. If they are greater it is obvious that the surplus ought not to be considered in mitigation of his damages, because he might have invested in the business even if he had continued in the defendant's employ and thus have earned that amount in any event. When this is the case, and also when the profits of the business and the value of his labor are equal, the rule in the principal case produces the correct result, awarding to the injured party the amount of his actual loss. But when the profits are less than the value of his labor the rule